

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**  
**July 18, 2012**

**Consideration and Approval of**  
**Waiver of the Penalties for the Broadway Villas Apartments Project and the McCarty Manor**  
**Apartments Project – Qualified Residential Rental Program**  
**(Agenda Item No. 6)**

**ACTION:**

Approve the Waiver of Forfeiture of Performance Deposit for the Broadway Villas Apartments (11-017) and the McCarty Manor Apartments (11-165).

**BACKGROUND:**

An Applicant bears the risk of forfeiting all or part of their performance deposit and receiving negative points if the Allocation is not used in accordance with the conditions and timeframes set forth in the Committee Resolution. As provided for under the Government Code, CDLAC permits an Applicant to request the waiver of the forfeiture of the performance deposit and negative points if the allocation is not used to issue the bonds within the set timeframe given. For a waiver to be approved, the CDLAC Executive Director subjects the request to two tests: 1) was the issue or event that prevented the issuance of the bonds unforeseen; and 2) was the issue or event wholly outside the control of the Applicant and Project Sponsor. A request must pass both tests.

**DISCUSSION:**

**Broadway Villas Apartments Project (11-017)**

On December 14, 2011, the Broadway Villas Avenue Apartments Project (“Project”) was awarded \$7,479,629 in tax-exempt bond allocation. The Project’s original issuance deadline was March 13, 2012; which the Executive Director extended to December 31, 2012 via a carryforward extension approval.

On May 31, 2012, the Applicant requested a carryforward issuance deadline extension to December 31, 2012 to provide additional time to address the requirements of ABx1-26, which includes Oversight Board approval of the transfer of housing assets from the Community Redevelopment Agency of the City of Los Angeles (“CRA of LA”) to the City, as successor entity for the housing assets of CRA of LA and a waiver of the forfeiture of the performance deposit.

According to the Applicant’s request, the land upon which the Project will be constructed was owned by the CRA of LA and was to be transferred to the Borrower pursuant to a Disposition and Development Agreement. The approval by the Oversight Board of the land transfer is anticipated to be administrative. The City expects the item will be placed on the agenda for the next Oversight Board meeting, however, the agenda of this meeting has not yet been released, and due to the number of items that the Oversight Board is reviewing, it is unclear when it will be heard. According to the Applicant (the City of Los Angeles), it does not anticipate any other impediments to the issuance of the bonds, and will make every effort to bring the approval before the Oversight Board in an expeditious manner.

Because of the number of items that the Oversight Board is reviewing that has caused the unforeseen delay of the hearing of these items, which is wholly out of the control of the Applicant and Project Sponsor, the Applicant is requesting a waiver of the forfeiture of the performance deposit that was certified by the City of Los Angeles in support of the application for allocation for the Project. Staff has concluded that this situation meets both waiver tests.

### **McCarty Manor Apartments Project (11-165)**

On December 14, 2011, the McCarty Manor Apartments Project (“Project”) was awarded \$3,400,000 in tax-exempt bond allocation to this USDA 515 Project. The Project’s original issuance deadline was March 13, 2012; which the Executive Director extended to June 26, 2012, and then again to July 18, 2012.

Until the California Tax Credit Allocation Committee Regulatory Agreement (“TCAC Agreement”) is recorded (after the tax credit units are placed in service), the USDA Deed of Trust will be in a superior position to the TCAC Agreement. Thus, a foreclosure under the USDA Deed of Trust would wipe out the TCAC Agreement and its related requirements. However, one of the requirements of the Agreement and the Internal Revenue Code (IRC) Section 42(h)(6)E(ii) is that in an event of a foreclosure or deed in lieu of foreclosure, the foreclosing lender must agree—for a period of three years—not to evict tenants (except for good cause) and not to raise rents above tax credit levels.

Since the USDA Deed of Trust will be prior to the TCAC Agreement, the Project Sponsor had expected the USDA to execute a Rider to the USDA Loan Documents that specifically states that the USDA agrees that USDA is subject to the requirements of IRC Section 42(h)(6)E(ii) in the event that the USDA forecloses on the property. A Rider with relevant language was submitted to the USDA along with the Subordination Agreement for bond financing.

The USDA has executed such Riders in the past, but now has informed the Project Sponsor that they no longer consider the signing of such a Rider as a routine matter. The USDA now has stated that the Project Sponsor must submit a formal request to the USDA Central Office to get the authority for the USDA-California office to sign the Rider. The USDA has further stated that the requested approval will not likely be processed quickly; jeopardizing the Project’s final bond sale closure date.

Because of the delay of processing the Rider by the USDA, causing the unforeseen delay in closing of the bonds, which is also wholly out of the control of the Applicant and Project Sponsor, the Applicant is requesting a waiver of the forfeiture of the performance deposit that was certified by the California Municipal Finance Authority in support of the application for allocation for the Project. Staff has concluded that this situation meets both waiver tests.

### **RECOMMENDATION:**

Given the facts associated with these waiver requests, staff recommends the approval of waivers of the performance deposit forfeiture for the Broadway Villas Apartments (11-017) and McCarty Manor Apartments (11-165).

*Prepared by Sarah Lester and Richard Fischer*